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IN THE SACRAMENTO SUPERIOR COURT
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA
HONORABLE JUDY HOLZER HERSHER, JUDGE, DEPARTMENT 45

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JOAN BOICE, by and through her)
Successor-in-Interest, ERIC BOICE,)
and ERIC BOICE, NANCEE BOICE)
and MARK BOICE, individually,)
)
Plaintiffs,)
vs.)
EMERITUS CORPORATION dba EMERITUS)
AT EMERALD HILLS,)
)
Defendant.)

Case No.
34-2009-00063714

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REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

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MONDAY, JANUARY 7, 2013

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I N D E X

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1 MONDAY, JANUARY 7, 2013

2 MORNING SESSION

3 ---o0o---

4 The matter of JOAN BOICE, by and through her
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,
8 Defendant, Case Number 34-2009-00063714, came on regularly
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the
10 Superior Court of California, for the County of Sacramento,
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
14 BOICE and MARK BOICE, were represented by LESLIE A.
15 CLEMENT, Attorney at Law; VALERIE DAWSON, Attorney at Law,
16 (not present); ASHLEY BAIRD, Attorney at Law; and SEAN
17 LAIRD, Attorney at Law.

18 The Plaintiffs, ERIC BOICE, NANCEE BOICE and ERIC
19 BOICE were present.

20 The Defendant, EMERITUS CORPORATION dba EMERITUS AT
21 EMERALD HILLS, was represented by BRYAN R. REID, Attorney
22 at Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,
23 Attorney at Law.

24 Also present on behalf of the Defendant, EMERITUS
25 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.
26 McKINNON, Vice President of Legal Affairs; LISA HULSE, Vice
27 President Quality & Risk Management; and HOLLY A. FORD
28 Trial Consultant.

1 **(The following proceedings were then had in open**
2 **court, in the presence of the jury.)**

3 THE COURT ATTENDANT: All rise.

4 Department 45 of the Sacramento Superior Court is
5 now in session. The Honorable Judge Judy Hersher
6 presiding.

7 You may be seated.

8 THE COURT: Good morning, everyone.

9 JURORS IN UNISON: Good morning, your Honor.

10 COUNSEL IN UNISON: Good morning, your Honor.

11 THE COURT: Welcome to Department 45. A little bit
12 different than the courtroom downstairs we did the jury
13 selection in.

14 All right. On your chairs, each of you should have
15 found a notebook. Inside that notebook is, as I mentioned
16 to you, a stenographic notebook which will be yours for the
17 duration of the trial. Each day, you're going to leave
18 that notebook on your chair, and it will be there when you
19 get back. And you will take everything in that notebook
20 plus as we add to it as we go along. (Verbatim.)

21 The very first thing that I need to do this morning,
22 as I told you last week, is to read to you what are called
23 preliminary instructions. Those are the instructions which
24 tell you how you are to conduct yourself during the course
25 of the trial. There is a set for you in your individual
26 binders under "Preinstructions."

27 As I said, the law requires that I read them to you.
28 So you can just simply close your book now if you want and

1 listen to me, or follow along on the written instructions
2 if you like.

3 Because you each have your open copy set, you are
4 free to mark them up in any way you want as you go along.
5 And, clearly, as we get to end of the trial, there will be
6 more for you in this binder.

7 Okay?

8 All right. So, please listen.

9 All right. Ladies and gentlemen, you have now been
10 sworn as jurors in this case. I want to impress on you the
11 seriousness and the importance of serving on a jury. Trial
12 by jury is a fundamental right in California. The parties
13 have a right to a jury that is selected fairly, that comes
14 to the case without bias, and that will attempt to reach a
15 verdict based on the evidence presented. Before we begin,
16 I need to explain how you must conduct yourselves during
17 the trial.

18 Do not allow anything that happens outside this
19 courtroom to affect your decision. During the trial, do
20 not talk about this case or the people involved in it with
21 anyone, including family and persons living in your
22 household, friends and coworkers, spiritual leaders,
23 advisors, or therapists.

24 This prohibition is not limited to face-to-face
25 conversations. It also extends to all forms of electronic
26 communications. Do not use any electronic device or media,
27 such as a cell phone or smart phone, PDA, computer, the
28 Internet, any Internet service, any text or

1 instant-messaging service, any Internet chat room, blog, or
2 website, including social networking sites, websites or
3 online diaries, to send or receive any information to or
4 from anyone about this case or your experience as a juror
5 until after you have been discharged from your jury duty.

6 You may say you are on a jury and how long the trial
7 may take, but that is all. You must not even talk about
8 the case with the other jurors until after I tell you that
9 it is time for you to decide the case.

10 During the trial you must not listen to anyone else
11 talk about the case or the people involved in the case.
12 You must avoid any contact with the parties, the lawyers,
13 the witnesses, and anyone else who may have a connection to
14 the case. If anyone tries to talk to you about this case,
15 tell that person that you cannot discuss it because you are
16 a juror. If he or she keeps talking to you, simply walk
17 away and report the incident to the court attendant as soon
18 as you can.

19 After the trial is over and I have released you from
20 jury duty, you may discuss the case with anyone, but you
21 are not required to do so.

22 During the trial, do not read, listen to, or watch
23 any news reports about this case. I have no information
24 that there will be news reports concerning this case. This
25 prohibition extends to the use of the Internet in any way,
26 including reading any blog about the case or about anyone
27 involved with it or using Internet maps or mapping programs
28 or any other program or device to search for or to view any

1 place discussed in the testimony.

2 Do not do any research on your own or as a group.
3 Do not use dictionaries, the Internet, or other reference
4 materials. Do not investigate the case or conduct any
5 experiments. Do not contact anyone to assist you, such as
6 a family accountant, doctor, or lawyer. Do not visit or
7 view the scene of any event involved in this case. If you
8 happen to pass by the scene, do not stop or investigate.
9 If you do need to view the scene during the trial, you will
10 be taken there as a group under proper supervision.

11 If you violate any of these prohibitions on
12 communication and research, including prohibitions on
13 electronic communications and research, you may be held in
14 contempt of court or face other sanctions. That means you
15 may have to serve time in jail, pay a fine, or face other
16 punishment for that violation.

17 You must decide this case based only on the evidence
18 presented in this trial and the instructions of law that I
19 will provide. Nothing that you see, hear, or learn outside
20 this courtroom is evidence unless I specifically tell you
21 it is. If you receive any information about this case from
22 any source outside of the courtroom, promptly report it to
23 the court attendant. It is important that all jurors see
24 and hear the same evidence at the same time.

25 It is important that you keep an open mind
26 throughout this trial. Evidence can only be presented a
27 piece at a time. Do not form or express an opinion about
28 this case while the trial is going on. You must not decide

1 on a verdict until after you have heard all the evidence
2 and have discussed it thoroughly with your fellow jurors in
3 your deliberations.

4 Do not concern yourselves for the reasons for the
5 rulings I will make during the course of the trial. Do not
6 guess what I may think your verdict should be from anything
7 I might say or do.

8 When you begin your deliberations, you may discuss
9 the case only in the jury room and only when all the jurors
10 are present.

11 You must decide what the facts are in this case.
12 And I repeat, your verdict must be based only on the
13 evidence that you hear or see in this courtroom. Do not
14 let bias, sympathy, prejudice, or public opinion influence
15 your verdict.

16 At the end of the trial, I will explain the law that
17 you must follow to reach your verdict. You must follow the
18 law as I explain it to you, even if you do not agree with
19 the law.

20 You have been given notebooks and may take notes
21 during the trial. Do not take the notebooks out of the
22 courtroom or jury room at any time during the trial. You
23 may take your notes into the jury room during
24 deliberations.

25 You should use your notes only to remind yourself of
26 what happened during the trial. Do not let your
27 note-taking interfere with your ability to listen carefully
28 to all the testimony and to watch the witnesses as they

1 testify. Nor should you allow your impression of a witness
2 or other evidence to be influenced by whether or not other
3 jurors are taking notes. Your independent recollection of
4 the evidence should govern your verdict, and you should not
5 allow yourself to be influenced by the notes of other
6 jurors if those notes differ from what you remember.

7 The court reporter is making a record of everything
8 that is said. If during deliberations you have a question
9 about what the witness said, you should ask that the court
10 reporter's records be read to you. You must accept the
11 court reporter's record as accurate.

12 At the end of the trial, your notes will be
13 collected and destroyed.

14 To assist you in your task as jurors, I will now
15 explain how the trial will proceed. I will begin by
16 identifying the parties to the case. Joan Boice, who is
17 now deceased, brings this claim by and through her
18 successor-in-interest Eric Boice. This is allowed by law.
19 If she is successful, the damages, if any, will be placed
20 in her estate. Eric Boice, Nancee Boice, and Mark Boice
21 individually, are also plaintiffs. Each plaintiff seeks
22 damages from the defendant.

23 The defendant in this case is Emeritus Corporation,
24 which does business as Emeritus at Emerald Hills, a
25 residential care facility in Auburn, California. During
26 the trial and in these instructions, we will refer to the
27 defendant as "Emeritus" or "Emeritus Corporation."

28 Joan Boice, through her successor-in-interest Eric

1 Boice, claims that defendant Emeritus neglected Joan Boice
2 while she was in its care and custody, which resulted in
3 her injury and death. Eric Boice, Nancee Boice and Mark
4 Boice claim that the defendant's neglect caused Joan
5 Boice's death.

6 Emeritus denies those claims and contends that it
7 acted appropriately at all relevant times.

8 In this trial, after hearing all the evidence, you
9 will be asked to decide:

10 1. Whether Emeritus Corporation, having Joan Boice
11 in its care and custody, violated the Elder Abuse and
12 Dependent Adult Civil Protection Act; and

13 2. Whether Joan Boice's adult children, Eric,
14 Nancee and Mark are entitled to damages for the loss of
15 their mother, known as a wrongful death action.

16 You may also be asked to consider whether punitive
17 damages are appropriate and, if so, in what amount.

18 First, each side may make an opening statement, but
19 neither side is required to do so. An opening statement is
20 not evidence. It is simply an outline to help you
21 understand what that party expects the evidence will show.
22 Also, because it is often difficult to give you the
23 evidence in the order we would prefer, the opening
24 statement allows you to keep an overview of the case in
25 mind during the presentation of the evidence. You cannot
26 use it to make any decisions in this case.

27 Remember, ladies and gentlemen, it's on the other
28 side of the red line.

1 Next, the jury will hear the evidence. Joan Boice,
2 Eric Boice, Nancee Boice, and Mark Boice will present
3 evidence first. When the Boices are finished, Emeritus
4 will have an opportunity to present evidence.

5 Each witness will be questioned by the side that
6 asked the witness to testify. This is called direct
7 examination. Then the other side is permitted to question
8 the witness. This is called cross-examination.

9 Documents or objects referred to during trial are
10 called exhibits. Exhibits are given a number so that they
11 may be clearly identified. Exhibits are not evidence until
12 I admit them into evidence. During your deliberations, you
13 will be able to look at all exhibits admitted into
14 evidence.

15 There are many rules that govern whether something
16 will be admitted into evidence. As one side presents
17 evidence, the other side has the right to object and to ask
18 me to decide if the evidence is permitted by the rules.
19 Usually, I will decide immediately, but sometimes I may
20 have to hear arguments outside of your presence.

21 After the evidence has been presented, I will
22 instruct you on the law that applies to the case and the
23 attorneys will make closing arguments. What the parties
24 say in closing arguments is not evidence. The arguments
25 are offered to help you understand the evidence and how the
26 law applies to it.

27 There are four plaintiffs in this trial, Joan Boice,
28 who is now deceased and who is being represented by her son

1 Eric Boice, who may be referred to as her
2 "successor-in-interest," and Nancee Boice, Mark Boice and
3 Eric Boice on their own behalf. There is one defendant in
4 this case -- or action, Emeritus Corporation dba Emeritus
5 at Emerald Hills. You should decide the case of each
6 plaintiff against the defendant separately, as if it were a
7 separate lawsuit. Each plaintiff and the defendant are
8 entitled to separate consideration of his or her own claim
9 and defenses.

10 Unless I tell you otherwise, all instructions apply
11 to each plaintiff and defendant.

12 A corporation, Emeritus, is a party in this lawsuit.
13 It is entitled to the same fair and impartial treatment
14 that you would give to an individual. You must decide this
15 case with the same fairness that you would use if you were
16 deciding the case between individuals.

17 When I use words like "person" or "he" or "she" in
18 these instructions to refer to a party, those instructions
19 also apply to Emeritus Corporation.

20 You must not consider whether any of the parties in
21 this case has insurance. The presence or absence of
22 insurance is totally irrelevant. You must decide this case
23 based only on the law and the evidence.

24 Sworn testimony, documents, or anything else may be
25 admitted into evidence. You must decide what the facts are
26 in this case from the evidence that you see or hear during
27 the trial. You may not consider anything that you see or
28 hear when court is not in session, even something done or

1 said by one of the parties, attorneys, or witnesses.

2 Again, as I've told you before, what the attorneys
3 say during the trial is not evidence. In their opening
4 statements and closing arguments, the attorneys will talk
5 to you about the law and the evidence. What the lawyers
6 say may help you understand the law and the evidence, but
7 their statements and arguments are not evidence.

8 The attorneys' questions are not evidence. Only the
9 witnesses' answers are evidence. You should not think that
10 something is true just because an attorney's question
11 suggests that it is true. However, the attorneys for both
12 sides can agree that certain facts are true. This
13 agreement is called a "stipulation." No other proof is
14 needed and you must accept those facts as true in this
15 trial.

16 Each side has the right to object to evidence
17 offered by the other side. If I do not agree with the
18 objection, I will say it is overruled. If I overrule an
19 objection, the witness will answer, and you may consider
20 the evidence. If I agree with the objection, I will say it
21 is sustained. If I sustain an objection, you must ignore
22 the question. If the witness did not answer, you must not
23 guess what he or she might have said or why I sustained the
24 objection. If the witness has already answered, you must
25 ignore the answer.

26 An attorney may make a motion to strike testimony
27 that you have heard. If I grant the motion, you must
28 totally disregard that testimony. You must treat it as

1 though it did not exist.

2 A witness is a person who has knowledge related to
3 this case. You will have to decide whether you believe
4 each witness and how important each witness' testimony is
5 to the case. You may believe all, part, or none of a
6 witness' testimony.

7 In deciding whether to believe a witness' testimony,
8 you may consider, among other factors, the following:

9 How well did the witness see, hear, or otherwise
10 sense what he or she described in court?

11 How well did the witness remember and describe what
12 happened?

13 How did the witness look, act, and speak while
14 testifying?

15 Did the witness have any reason to say something
16 that was not true?

17 Did the witness show any bias or prejudice?

18 Did the witness have a personal relationship with
19 any of the parties involved in this case?

20 Does the witness have a stake -- a personal stake in
21 how this case is decided?

22 What was the witness' attitude toward this case or
23 about giving testimony?

24 Sometimes a witness may say something that is not
25 consistent with something else he or she said. Sometimes
26 different witnesses will give different versions of what
27 happened. People often forget things or make mistakes in
28 what they remember. Also, two people may see the same

1 event but remember it differently. You may consider these
2 differences, but do not decide that testimony is untrue
3 just because it differs from other testimony.

4 However, if you decide that a witness has
5 deliberately testified untruthfully about something
6 important, you may choose not to believe anything that
7 witness said. On the other hand, if you think the witness
8 testified untruthfully about some things but told the truth
9 about others, you may accept the part you think is true and
10 ignore the rest.

11 Do not make any decision simply because there were
12 more witnesses on one side than on the other. If you
13 believe it is true, the testimony of a single witness is
14 enough to prove a fact.

15 You must not be biased in favor of or against any
16 witness because of his or her disability, gender, race,
17 religion, ethnicity, sexual orientation, age, national
18 origin, or socioeconomic status.

19 During the attorneys' opening statements and
20 throughout the trial, you may be shown videotaped excerpts
21 from depositions that witnesses gave in the case.

22 A deposition is the testimony of a person taken
23 before trial. At a deposition the person is sworn to tell
24 the truth and is questioned by the attorneys.

25 You may notice that there are short gaps in the
26 videotape or that portions of the dialogue seem to have
27 been removed. You should not be concerned with what may
28 have been removed, or why.

1 Some testimony will be given in Spanish. An
2 interpreter will provide a translation for you at the time
3 that the testimony is given. You must rely solely on the
4 translation provided by the interpreter, even if you
5 understand the language spoken by the witness. Do not
6 retranslate any testimony for other jurors. If you believe
7 the court interpreter translated testimony incorrectly, let
8 me know immediately by writing a note and giving it to the
9 court attendant.

10 Do we need some water here?

11 THE COURT ATTENDANT: She said she was okay.

12 Are you still okay?

13 JUROR TWO: It was just a little -- I'm so sorry.

14 (Pause.)

15 THE COURT: We have four alternate jurors. Each of
16 you is bound by the same rules that govern the conduct of
17 the jurors who are sitting on the panel. You will observe
18 the same trial and should pay attention to all of my
19 instructions just as if you were sitting on the panel.
20 Sometimes a juror needs to be excused during a trial for
21 illness or some other reason. If that happens, an
22 alternate will be selected to take the juror's place.

23 If, during the trial, you have a question that you
24 believe should be asked of a witness, you may write out the
25 question and send it to me through my courtroom staff. I
26 will share your question with the attorneys and decide
27 whether it may be asked.

28 Do not feel disappointed if your question is not

1 asked. Your question may not be asked for a variety of
2 reasons. For example, the question may call for an answer
3 that is not allowed for legal reasons. Also, you should
4 not try to guess the reason why a question is not asked or
5 speculate about what the answer might have been. Because
6 the decision whether to allow the question is mine alone,
7 do not hold it against any of the attorneys or their
8 clients if your question is not asked.

9 Remember that you are not an advocate for one side
10 or the other. Each of you is an impartial judge of the
11 facts. Your questions should be posed in as neutral a
12 fashion as possible. Do not discuss any question asked by
13 any juror with any other juror until after deliberations
14 begin.

15 Each one of us has biases about or certain
16 perceptions or stereotypes of other people. We may be
17 aware of some of our biases, though we may not share them
18 with others. We may not be fully aware of some of our
19 other biases.

20 Our biases often affect how we act, favorably or
21 unfavorably, toward someone. Bias can affect our thoughts,
22 how we remember, what we see and hear, whom we believe or
23 disbelieve, and how we make important decisions.

24 As jurors you are being asked to make very important
25 decisions in this case. You must not let bias, prejudice,
26 or public opinion influence your decision.

27 Your verdict must be based solely on the evidence
28 presented. You must carefully evaluate the evidence and

1 resist any urge to reach a verdict that is influenced by a
2 bias for or against any party or witness.

3 From time to time during the trial, it may become
4 necessary for me to talk with the attorneys out of the
5 hearing of the jury, either by having a conference at the
6 bench when the jury is present in the courtroom or by
7 calling a recess to discuss matters outside of your
8 presence. The purpose of these conferences is not to keep
9 relevant information from you, but to decide how certain
10 evidence is to be treated under the rules of evidence. Do
11 not be concerned about our discussions or try to guess what
12 is being said.

13 I may not always grant an attorney's request for a
14 conference. Do not consider my granting or denying a
15 request for a conference as any indication of my opinion of
16 the case or my view of the evidence.

17 I know that many of us are used to communicating and
18 perhaps even learning by electronic communications and
19 research. However, there are good reasons why you must not
20 electronically communicate or do any research on anything
21 having to do with this trial or the parties.

22 In court, jurors make important decisions that have
23 consequences for the parties. Those decisions must be
24 based only on the evidence that you hear in this courtroom.

25 The evidence that is presented in court can be
26 tested; it can be shown to be right or wrong by either
27 side; it can be questioned; and it can be contradicted by
28 other evidence. What you might read or hear on your own

1 could easily be wrong, out of date, or inapplicable to this
2 case.

3 The parties can receive a fair trial only if the
4 facts and information on which you base your decisions are
5 presented to you as a group, with each juror having the
6 same opportunity to see, hear, and evaluate the evidence.

7 Also, a trial is a public process that depends on
8 disclosure in the courtroom of facts and evidence. Using
9 information gathered in secret by one or more jurors
10 undermines the public process and violates the rights of
11 the parties.

12 Some of the decisions you will make in this case
13 require that the party prove to you certain things are more
14 likely to be true than not true. That means that a party
15 must persuade you by the evidence presented in court that
16 what he or she is required to prove is more likely to be
17 true than not true. This is referred to as "the burden of
18 proof."

19 After weighing all of the evidence, if you cannot
20 decide that something is more likely to be true than not
21 true, you must conclude that the party did not prove it.
22 You should consider all the evidence, no matter which party
23 produced the evidence.

24 In criminal trials, the prosecution must prove that
25 the defendant is guilty beyond a reasonable doubt. But in
26 civil trials, such as this one, the party who is required
27 to prove something need prove only that it is more likely
28 to be true than not true.

1 Certain facts in this trial must be proved by clear
2 and convincing evidence, which is a higher burden of proof.
3 This means the party must persuade you that it is highly
4 probable that the fact is true. I will tell you
5 specifically which of the facts must be proved by clear and
6 convincing evidence.

7 All right. Ladies and gentlemen, that concludes the
8 preliminary instructions given by the Court.

9 I wanted to let you know that during the course of
10 this trial, we're going to have two court reporters
11 switching out from time to time so they can stay fresh.

12 You've already met Miss Michelle Madrid. At the
13 break, we'll have a different court reporter, Brooke
14 Henrikson. She and Michelle will be switching out
15 throughout the course of the trial. So you'll see one or
16 the other of them in here.

17 Does the plaintiff wish to make an opening
18 statement?

19 MS. CLEMENT: Yes, your Honor.

20 THE COURT: Please proceed.

21 MS. CLEMENT: Thank you.

22 (Pause.)

23 MS. CLEMENT: Good morning.

24 Emeritus is not a healthcare provider. Emeritus is
25 a real estate acquisition company.

26 THE COURT: Miss Clement, it's hard hearing you.
27 Were you going to wear the microphone?

28 MS. CLEMENT: I was, but then we got a lot of

1 feedback.

2 THE COURT: Okay. It's going to be hard for
3 everyone to hear you.

4 MS. CLEMENT: I'll speak up, your Honor.

5 THE COURT: Okay.

6 MS. CLEMENT: Thank you.

7 Thank you, Terrance, very much. Sorry.

8 THE COURT ATTENDANT: You're welcome.

9 MS. CLEMENT: I still have that thing going on.
10 Let me start over.

11 Emeritus is not a healthcare provider. Emeritus is
12 a real estate acquisition company. Emeritus should never
13 take any elders into the buildings that it acquires because
14 they don't have the staff, they don't have the training,
15 and they don't have the supervision to provide the care
16 that Emeritus advertises. Emeritus is run by very smart
17 businessmen and very clever advertisers.

18 MR. REID: Your Honor, this is very argumentative.

19 THE COURT: It is. We need to talk about what the
20 evidence will show.

21 MS. CLEMENT: The evidence will show that Emeritus
22 advertises to elders that they can come to their facilities
23 and that they will be provided with care by highly-trained
24 staff; that there will be nurses available; that they will
25 have activities every day; that they will be engaged; that
26 there will be a full-time nurse to provide care for them;
27 that there will be coordination of their care; that their
28 families will be kept notified of any changes in their

1 condition.

2 Emeritus advertises to the children and says:

3 Don't put your parent in a nursing home. Come here
4 to our assisted living facility. And we will provide care
5 for your loved one. We will provide dementia care. We are
6 specialists in dementia care. We are leaders in dementia
7 care. We have a specialized program called "Join Their
8 Journey." And our staff are highly trained and know how to
9 perform the care that your loved ones need, and they will
10 thrive here.

11 But the advertisement and this reality are two
12 different things at Emeritus.

13 THE COURT: Do you want the lights?

14 MS. CLEMENT: Please.

15 So I want to explain to you a little bit about this
16 company and who the players are.

17 Emeritus is a Seattle corporation. It was formed in
18 1993 with one building in Renton, Washington. It was
19 formed initially by this gentleman, Dan Baty, the CEO and
20 chairman and founder.

21 Through a series of real estate acquisitions,
22 Emeritus grew. In 2007, Emeritus had about 200 facilities,
23 and it merged with another company called Summerville,
24 where this gentleman, Granger Cobb, came to the company and
25 became co-CEO.

26 These two gentlemen then went on a quest to become
27 the largest long-term care provider in the world. And by
28 2012, they had succeeded in that.

1 You will hear from all of these people on the top
2 row. They're all Seattle corporate people.

3 We have Melanie Werdel, the Executive Vice President
4 of Administration. And she answers directly to the CEO.

5 We have Budgie Amparo, Registered Nurse, Executive
6 Vice President of Quality & Risk Management. He is the
7 head nurse for Emeritus and he is in Seattle, Washington.

8 You will hear from Crystal Roberts, a nurse, who is
9 the National Memory Care Director, responsible for
10 developing the programs, the activities-focused programs
11 that Emeritus advertises.

12 You will hear from Ana De La Cerda, the Director of
13 Policy and Compliance.

14 You will hear most likely from Jayne Sallerson, the
15 Executive Vice President of Sales and Marketing.

16 Now, the next level down -- Emeritus has different
17 divisions. And the California division is sometimes
18 referred to as "The West Division."

19 And in this trial you'll hear from Lisa Hulse, who
20 you've met already in this case during jury selection, who
21 is sitting in the audience, and she is the head nurse for
22 the State of California. She answers to Budgie Amparo.

23 On the far left here is Catherine Ratelle,
24 Vice President of Operations for the West Division, or
25 California.

26 In 2007, Catherine Ratelle, Budgie Amparo, Melanie
27 Werdel, Granger Cobb, Ana De La Cerda, Jayne Sallerson all
28 came to Emeritus with the merger from Summerville.

1 Catherine Ratelle reported up to the chief operating
2 officer and other top executives at Emeritus.

3 When Miss Ratelle left the company, this position
4 was later taken by Susan Rotella, who became the
5 Vice President of Operations for California. You will hear
6 from her as well.

7 Then we come down to the regional level. In
8 California, in 2007 and 2008, there were four regions in
9 California. The region that we're in is Region Number One.
10 That region was operated by Regional Director of Operations
11 Ronda Castleberg-Smith. Miss Smith reported up to the
12 Vice Presidents of Operations.

13 Her partner was Doris Marshall, RN, the Regional
14 Director of Quality Services. She was the nurse who was
15 supposed to be overseeing the quality of care.

16 Nurse, nurse, nurse (indicating).

17 Operations, operations, operations (indicating).

18 We are here because promises made to Emeritus'
19 families were broken.

20 Let's first hear from Budgie Amparo, the head nurse,
21 about what his responsibilities are at Emeritus.

22 **(The following video excerpt was then played in open**
23 **court):**

24 Q. Are you responsible for -- ultimately responsible
25 for the resident outcomes at Emeritus as the head nurse?

26 A. I consider -- I consider myself the pillar of
27 quality services, so anything that has to do with resident
28 care needs, I personally own that.

1 Q. Is it your understanding as the head nurse for
2 Emeritus that Emeritus always needs to comply at a minimum
3 with the Title 22 regulations for assisted living
4 facilities?

5 A. Yes.

6 Q. And is it your understanding that Emeritus always
7 needs to comply with their own policies and procedures in
8 their assisted living facilities?

9 A. Yes.

10 **(Video stopped.)**

11 MS. CLEMENT: Now, Title 22, you're going to learn
12 in the course of the trial, are a part of the regulations
13 that the Court will at the end of the trial instruct you on
14 that apply. But you're going to hear about the standard of
15 care and what Emeritus is required to do in order to get a
16 license to operate in this state and provide care and take
17 in elders.

18 You're going to learn that they have to submit to
19 the State a plan of operations, a plan, a blueprint of how
20 they're going to care for the elderly residents that they
21 bring in. And you're going to hear about the promises that
22 they also make to the State. And you're going to learn
23 that they are on an honor system with the State to make
24 sure that they comply with the regulations, that they
25 comply with their own policies and procedures.

26 And you're going to learn that most unfortunately,
27 in California, for the last several years, the numbers of
28 time (verbatim) that the State would go in and do a survey,

1 an inspection of these assisted living facilities, went
2 from once a year to once every five years.

3 So now that honor system becomes very, very
4 important.

5 You're going to learn about a power struggle between
6 the people who are working in these facilities, the boots
7 on the ground, the people that are caring for the elders,
8 and the executives that are running the company and selling
9 to the elders and their families who are trusting them.
10 And this power struggle is going to become very apparent to
11 you. Because the people on the ground that are providing
12 the day-to-day care are begging and asking for more care,
13 for more staff, for more training, for more qualifications,
14 for more supervision.

15 So back in 2007, at the facility where Mrs. Boice
16 and her husband became residents a year later, in 2008,
17 there was a nurse. And the nurse that was working in that
18 facility was named Mary Kasuba. And she worked there and
19 was responsible for providing care to the 60 to 80
20 residents who lived there. And from the very first day she
21 came to work, she found that there was a huge shortage of
22 staff, a lack of training, and that there was serious
23 safety concern for the residents. So she sent notice to
24 Emeritus.

25 And she wrote a letter, a five-page letter. She
26 gave it to her executive director at the facility, her
27 immediate boss, and she sent this letter to everyone at
28 corporate headquarters that was an executive. She sent it

1 to the CEO and chairman, Dan Baty. She sent it to Granger
2 Cobb, the co-CEO. She sent it to Melanie Werdel. She sent
3 it to the CFO; she sent it to the COO, the Chief Financial
4 Officer, the Chief Operating Officer. She sent it to ten
5 executives. She called them. She begged for help. And
6 they got the letter.

7 And let's hear what Mr. Amparo had to say about
8 Miss Kasuba and her letter.

9 **(The following video excerpt was then played in open**
10 **court) :**

11 Q. And did you feel that when you read Mrs. Kasuba's
12 letter that she had serious concerns about the safety of
13 the residents at Emerald Hills?

14 A. Yes.

15 Q. Was it your understanding that one of Mrs. Kasuba's
16 concerns was that there was not enough staff to cover any
17 part of the day-to-day staffing needs to give the residents
18 their quality of care that Emerald Hills advertises since
19 she started work with Emeritus?

20 A. Yes.

21 Q. And did she also to your understanding let you know
22 in her letter that she didn't think there was enough staff
23 in the kitchen and housekeeping, resident assistants, or
24 the med techs?

25 A. Yes.

26 Q. Mr. Amparo, did you personally do anything to
27 investigate the complaints of understaffing at Emeritus at
28 Emerald Hills since you've been at Emeritus?

1 A. No.

2 Q. When you read Mary Kasuba's letter of October 12th,
3 2007 back in 2007, did you make a recommendation that that
4 Emerald Hills facility not admit any more residents until
5 the staffing situation could be assessed and addressed?

6 A. No.

7 **(Video stopped.)**

8 MS. CLEMENT: Emeritus knew about understaffing at
9 the highest level of the corporation. It authorized it.
10 It authorized that understaffing. It ratified the
11 understaffing. It promoted it. And they knew the
12 consequences of what would happen with understaffing, and
13 they knew exactly what that meant.

14 So let's hear now from Lisa Hulse, the head nurse
15 for California, which at the time that Mrs. Boice was a
16 resident and the time that Miss Kasuba was giving them
17 notice had 44 facilities, just in this state, under her
18 purview.

19 **(The following video excerpt was then played in open**
20 **court):**

21 Q. So in order to have sufficient staff in a building
22 to meet the residents' needs, you need to have staff enough
23 in numbers, qualifications, training, and supervision?

24 A. Yes.

25 **(Video stopped.)**

26 MS. CLEMENT: Now, numbers, that's enough physical
27 bodies in the building. Training, that's people who know
28 how to deliver the care for the residents that you have.

1 Qualifications, that means if you didn't already have
2 training, you need to have at least qualifications coming
3 into the building. For example, a licensed nurse, if
4 that's what your residents need. Supervision. You've got
5 a lot of physical people -- bodies in this building. You
6 have a lot of residents, somewhere between 75 and 80
7 residents during the three months that Mrs. Boice lived at
8 the facility. You've got three stories of assisted living
9 residents. You have 18 maximum dementia residents in a
10 locked -- not a truly locked, but a delayed egress. It's
11 hard to get out of, slow to get out of dementia unit.

12 There's a lot of moving parts. So you need to have
13 trained people, and enough of 'em, and they need to be
14 supervised.

15 So let's hear now from -- or, excuse me. Let's look
16 now at what Emeritus' written policy was about staffing.

17 They had a written policy, and that policy stated
18 that the community staffing ratios would be based on the
19 needs of the residents. And those needs would be
20 identified in the resident's care plan, or service plan.

21 And you're going to hear that term throughout the
22 trial. And basically what that means is that you assess
23 someone, a licensed person or a qualified person does an
24 assessment, a physical, functional assessment, a mental
25 assessment, a social assessment of someone, and you develop
26 a plan to meet those needs. And that plan is in writing
27 and it's available to the caregivers, and they're trained
28 on it so they know how to meet the needs of that individual

1 person.

2 And so the Emeritus written policy said, *We're going*
3 *to have staffing ratios based on the needs of our*
4 *residents. And those needs are going to be identified in*
5 *the care plans. And we're going to make sure that the*
6 *staffing is sufficient at all times, to make sure that each*
7 *resident receives the care that they need, that we're*
8 *meeting those residents' needs. And it's going to ensure*
9 *that we can assist with medications as appropriate. It's*
10 *going to ensure that we have a safe evacuation of the*
11 *community, in case there's an emergency; that there's a*
12 *staff member available at all times for all the residents*
13 *in the facility, on three stories and in the dementia unit;*
14 *and the staff is immediately available when a resident*
15 *requests assistance.*

16 That's not the right place to put that.

17 So, what did Emeritus know about staffing?

18 Well, just to reorient you to who we're talking
19 about here, the top level is the Seattle executives. The
20 next level, the divisional executives. And then down here,
21 we're talking about the regional level, for Region One,
22 which goes from -- you'll learn it goes from Napa to Lodi,
23 to Auburn, Fairfield, Sacramento, Citrus Heights,
24 Roseville.

25 These two ladies were responsible for facilities --
26 between ten to thirteen facilities in their tenure, in that
27 geographic region, and at the end all the way to Eureka.

28 So let's hear first from Doris Marshall, the

1 Regional Nurse, and then Ronda Castleberg, the Director of
2 Operations, as to what they knew about staffing or
3 understaffing.

4 (The following video excerpt was then played in open
5 court):

6 Q. Did you have complaints from the nurses that worked
7 under you at Emeritus that the facilities were
8 understaffed?

9 A. Yes.

10 (Video stopped.)

11 MS. CLEMENT: Now, here's Ronda. And she was asked
12 whether -- when she came on board from Region Two to
13 Region One, whether it was brought to her attention that
14 there were concerns about staffing from the facility nurse.
15 And the facility nurse was Peggy Stevenson at the time
16 Mrs. Boice was a resident.

17 And she said, *Well, I don't recall what point it was*
18 *brought to my attention. But, yes, when I came on -- these*
19 *concerns were brought to my attention. And when I came on*
20 *board on August 11th, 2008, I was immediately responsible*
21 *for 11 communities.*

22 And that's what Emeritus calls its facilities. It
23 calls them "communities."

24 And I asked her then, *Were those concerns regarding*
25 *adequate staffing continued with the next administrator?*

26 So the administrator at the time that Mrs. Boice was
27 a resident was Nancy Cordova. And she left right after
28 Mrs. Boice left. And the next administrator was Richard

1 Lee. And those concerns, according to Ronda Castleberg,
2 continued.

3 Then I asked her about Doris Marshall's testimony,
4 where she said that nurses complained to her that in
5 Region One the facilities were understaffed, and was that
6 concern shared with her. And, yes, she believed she did
7 share that concern with her.

8 Now, let's move down to the facility level.

9 So here's our organizational chart of the facility.
10 And it's up there, too, on the screen. But we have here --
11 these are the managers, the directors. Alicia Parga, the
12 Memory Care Director. Nancy Cordova, the Executive
13 Director, or administrator. Peggy Stevenson, the Resident
14 Care Director. That's what they called the nurse at the
15 facility. They were all the directors.

16 Linda Kittle, Caregiver and Med Tech. Nanette Read,
17 Caregiver, Med Tech. Michele Riley, Caregiver, Med Tech.
18 Angelica Juarez, Caregiver, Med Tech.

19 Let me explain to you briefly what a med tech is.
20 At Emeritus facilities they train caregivers to become
21 med techs. And med techs can then administer medication to
22 the elderly residents, including people with dementia,
23 including people who can't tell them if they need a
24 as-needed medication, or "I need this" or "I need that."
25 These med techs are given a two-day, 16-hour course, and
26 then they're given a certificate and then they are passing
27 medications.

28 And below them are the caregivers. And here are two

1 of the caregivers that we may hear from during the trial;
2 Maritza Morales and Hermalinda Alonso.

3 So this is kind of the hierarchy at the facility
4 level.

5 So now let's hear from first the directors and then
6 the caregivers about their experience of staffing at
7 Emerald Hills.

8 **(The following video excerpt was then played in open**
9 **court):**

10 Q. And did the staff that came to you tell you that
11 they felt there wasn't enough staff on the floor to meet
12 the residents' needs?

13 A. Yes.

14 **(Video stopped.)**

15 **(The following video excerpt was then played in open**
16 **court):**

17 Q. Have you ever complained to any of your supervisors
18 at Emeritus that you didn't think it was safe to leave the
19 residents in the Memory Care Unit with just one person
20 watching them overnight?

21 A. Yes.

22 Q. What was the response?

23 A. They said there's another caregiver on the assisted
24 living side, that they can always call for help.

25 Q. Did it seem to you that that was not an adequate
26 response?

27 A. It seemed it wasn't a safe response. Because
28 anything on any given night can happen, and the assisted

1 living side could be dealing with an emergency at the time,
2 themselves.

3 Q. And you have people in the Memory Care Unit that are
4 two-people assist, correct?

5 A. Yes.

6 Q. Like Mrs. Boice, right?

7 A. Yes.

8 **(Video stopped.)**

9 **(The following video excerpt was then played in open**
10 **court):**

11 Q. How are you going to do a two-person assist by
12 yourself in the Memory Care Unit if you're the only person
13 working there?

14 A. That doesn't sound physically possible.

15 **(Video stopped.)**

16 **(The following video excerpt was then played in open**
17 **court):**

18 Q. Well, who would know better than the staff who were
19 completing out the resident care duties than the staff
20 themselves as to whether or not they were short?

21 A. The staff weren't aware of what the staffing budget
22 was.

23 **(Video stopped.)**

24 MS. CLEMENT: So let me give you a little highlight
25 of what the evidence is going to be about what the staffing
26 really was at Emeritus.

27 In the Memory Care Unit, on the day shift, for 15 to
28 17 residents during Mrs. Boice's time there, there could be

1 three or four people in that unit. That was the maximum.
2 On the evening shift, between 2:00 and 10:00 p.m., there
3 would be one or two caregivers. On the night shift for the
4 three months that Mrs. Boice lived there, the most staff
5 they ever had to care for 15 to 17 residents was one
6 person. And in the month of November, there were nights
7 when there was no one there.

8 On the assist living side, three stories of this
9 very large building, where the staff had to take an
10 elevator and go apartment to apartment to apartment down
11 long halls, on the night shift, there were typically two
12 staff, for three floors of 20 residents each, of different
13 levels of care. Some residents needed assistance to get in
14 and out of bed. Some residents suffered from dementia and
15 were on the assist living side. Some residents needed more
16 than two people to get them out of bed to help them go to
17 the toilet.

18 How did Emeritus approach this problem of staffing
19 and these cries for help?

20 Because you will hear evidence, much more evidence
21 than these brief little clips we're showing you now, that
22 there were cries for help at every level of this
23 corporation. From the boots on the ground to the regional
24 level, to the divisional level, all the way up. And those
25 cries were heard at corporate. And the way Emeritus
26 addressed that was to tell their employees to lie and to
27 shade the truth.

28 Now, Emeritus has mandatory staff meetings, like

1 most companies. And in a mandatory staff meeting that they
2 call "in-services," in 2008, before Mrs. Boice became a
3 resident, this is what they told their employees.

4 *Family members are not to hear we are understaffed.*

5 This is directly coming from the in-service training
6 agenda that the executive director, a nurse, gave to the
7 employees at Emeritus in January of 2008.

8 It also said things like, *Don't just cover up a wet*
9 *spot on the resident's bed.*

10 You're going to learn a lot more about what training
11 did and didn't happen at Emeritus. But I will tell you
12 this training is not the training that is expected by the
13 State or the standard of care.

14 Now, let's talk about training in a bigger picture.
15 And let's hear back from Melanie Werdel, Executive Vice
16 President of the company, about training.

17 And we're going to follow her with learning from
18 Ronda Castleberg about the importance of training.

19 **(The following video excerpt was then played in open**
20 **court) :**

21 Q. And is it also your understanding that it's
22 Emeritus' policy to have highly-trained staff in its
23 facilities?

24 A. That's -- that's what we strive to have,
25 highly-trained staff.

26 Q. And that's what you represent to the community in
27 your web page and the brochures?

28 A. Yes, we do.

1 **(Video stopped.)**

2 MS. CLEMENT: Ronda Castleberg-Smith has been in
3 this industry for many years and worked for companies
4 besides Emeritus. And in her experience, training is an
5 integral part of improving quality of care and service to
6 the elders that live in Emeritus facilities. And she
7 understands that there are specific training requirements,
8 both by the State of California and by Emeritus' own
9 policies. Let's look at some of those things.

10 These are the policies that Emeritus has. Emeritus
11 says that each of its staff, before assuming any job
12 responsibilities, will have at least four hours of
13 orientation, and they must complete an additional 16 hours
14 of job specific orientation to include assistance with
15 activities of daily living. And on top of that, every year
16 they're supposed to have a minimum of 12 hours of education
17 on caring for the elderly.

18 Now, you're also going to learn about requirements
19 for -- that the State provides for training, and that those
20 requirements are more specific and more intense when you
21 advertise that you care with for people with dementia. And
22 the evidence will show that in this case, in reviewing the
23 personnel files, which is where this evidence of training
24 is supposed to take place, that none of the staff working
25 at Emeritus at Emerald Hills had either the State or
26 Emeritus-required training at the time that Mrs. Boice was
27 a resident.

28 Let's talk -- or hear, excuse me, now from the

1 nurses: Doris Marshall, the regional nurse; Peggy
2 Stevenson, the facility nurse; Alicia Parga, the facility
3 memory care director who was responsible for the Dementia
4 Unit; and Nancy Cordova, about what they knew and didn't
5 know about training.

6 **(The following video excerpt was then played in open**
7 **court):**

8 Q. Did you have complaints that the staff in the
9 facilities were not properly trained?

10 A. Yes.

11 **(Video stopped.)**

12 **(The following video excerpt was then played in open**
13 **court):**

14 Q. Did Emeritus corporate ever give you any training on
15 really how to do your job as the resident care director?

16 A. No.

17 **(Video stopped.)**

18 **(The following video excerpt was then played in open**
19 **court):**

20 Q. Did you feel often times that you just did not have
21 the training that you needed to do that job as a Memory
22 Care Unit director?

23 A. Yes.

24 **(Video stopped.)**

25 **(The following video excerpt was then played in open**
26 **court):**

27 Q. Would it be fair to say that the training sessions
28 that you attended were primarily regarding sales,

1 marketing, and budgeting?

2 A. Yes, that would be fair.

3 **(Video stopped.)**

4 MS. CLEMENT: Now, perhaps, if you don't train your
5 staff, you could hire staff that already have the
6 qualifications that came on board.

7 Now we're going to talk about qualifications and, in
8 particular, the qualifications of the directors, the people
9 that are supervising the caregivers.

10 And first we're going to hear from Melanie Werdel,
11 the Executive Vice President in Seattle.

12 **(The following video excerpt was then played in open
13 court):**

14 Q. Okay. So is it ultimately Seattle's responsibility
15 to make sure that each facility has qualified executive
16 directors?

17 A. Ultimately.

18 **(Video stopped.)**

19 MS. CLEMENT: So what you're going to learn in the
20 course of this trial is that Executive Director Nancy
21 Cordova, who worked at Emeritus for a year-and-a-half --
22 and she quit right after Mrs. Boice left, in December of
23 2008 -- she was there a year-and-a-half. And over that
24 year-and-a-half, she had four different bosses and four
25 different nurses. And in the course of that
26 year-and-a-half, her training was basically on sales and
27 marketing. And you're going to learn that the standard of
28 care for someone who is going to be an administrator or

1 executive director of a assisted living facility in
2 California, that cares for more than 50 people, that they
3 have to have a minimum of three years of experience. This
4 was Nancy's first position as executive director.

5 Now, let's hear from Ana De La Cerda, who, as you
6 may recall -- this is the first time you'll be hearing from
7 her -- she is the Director of Policy and Compliance at
8 corporate headquarters, about what is expected.

9 **(The following video excerpt was then played in open**
10 **court) :**

11 Q. Would you say that in hiring talented and qualified
12 individuals with knowledge and expertise would include at
13 least what's set forth in their job description?

14 A. Minimum standards, yes.

15 **(Video stopped.)**

16 **(The following video excerpt was then played in open**
17 **court) :**

18 Q. So in the job description it indicates that the
19 minimum eligibility requirements are a Bachelor of Arts or
20 Bachelor of Science degree in the medical, psychological,
21 or social field.

22 Did you ever have that during the time you were a
23 Memory Care Unit director?

24 A. No.

25 Q. It also indicates having a gerontological experience
26 preferred for two to three years in the healthcare setting.

27 Did you have that?

28 A. No.

1 Q. It also included having knowledge of Alzheimer's
2 disease and related dementia.

3 Did you have that when you started as the Memory
4 Care Unit director?

5 A. No.

6 **(Video stopped.)**

7 MS. CLEMENT: Now you're going to hear from the
8 California head of human resources for Emeritus, Audrey
9 Withers. And the question is, *What is Emeritus doing to*
10 *make sure they have qualified people in these positions*
11 *that meet the minimum job description, as described by Ana*
12 *De La Cerda?*

13 **(The following video excerpt was then played in open**
14 **court):**

15 Q. Is there anyone outside of the facility level who
16 checks to make sure that the Memory Care program director
17 meets the minimum eligibility requirements?

18 A. Not typically, as a rule.

19 Q. Okay.

20 **(Video stopped.)**

21 MS. CLEMENT: So, here we have Alicia Parga, who was
22 hired as a caregiver at Emerald Hills, day one. About day
23 two, she was made a med tech without any training. About a
24 month later, the Memory Care Unit director position was
25 vacant, so they moved her in there. And she was happy
26 about that because she did love elders, and she got a four
27 dollar an hour raise to 14 dollars an hour.

28 But this is their job description for the memory

1 care director. Because Emeritus knows that frail
2 residents, the frailest of the frail, of the elderly, are
3 the dementia residents. And they need someone who has a
4 background in it, a bachelor's degree in medical,
5 psychological, social, or gerontological experience,
6 preferred were two to three years experience in the
7 healthcare setting. And Miss Parga didn't have either of
8 those things. Even the basic knowledge of Alzheimer's
9 disease and related dementia, she did not have that.

10 In fact, she will testify, and has testified in
11 deposition, that she was in that position for a
12 year-and-a-half before she got any training related to her
13 job.

14 So let's talk now about supervision. Because
15 remember, Lisa Hulse said staffing. What do we have to
16 have to meet the needs of the residents? Staff enough in
17 numbers, training, qualifications and supervision.

18 So first we're going to hear again from the three
19 directors at Emerald Hills, Nancy, Alicia and Peggy, about
20 what supervision they got from the people high up, above
21 them.

22 **(The following video excerpt was then played in open**
23 **court):**

24 Q. Do you remember ever having a written performance
25 evaluation done of you?

26 A. I don't remember having one, no.

27 **(Video stopped.)**

28 **(The following video excerpt was then played in open**

1 **court) :**

2 Q. Do you have any written reviews, performance
3 evaluations, while you worked at Emeritus as the Memory
4 Care Unit director?

5 A. No.

6 **(Video stopped.)**

7 MS. CLEMENT: And how about --

8 **(The following video excerpt was then played in open**
9 **court) :**

10 Q. Did you ever have a performance evaluation while you
11 worked at Emeritus?

12 A. I don't think so, no.

13 **(Video stopped.)**

14 MS. CLEMENT: And what about the caregivers? Who
15 was supervising them? Remember, these people have the
16 least amount of education and training and they're the ones
17 who are providing the hands-on care. Who is supervising
18 them?

19 You're going to hear now from Michelle Riley, a med
20 tech who worked at the facility, got the two-day training,
21 and then was passing medications. And her supervisor would
22 have been Alicia, and Peggy Stevenson, the nurse, primarily
23 the nurse because, well, Michelle is passing medications.

24 **(The following video excerpt was then played in open**
25 **court) :**

26 Q. On the -- when you worked on the p.m. shift, was
27 there anyone supervising you directly, what you were doing?

28 A. No.

1 Q. How about on the night shift?

2 A. No.

3 Q. When you worked on the a.m. shift sometimes, did you
4 ever -- in the Memory Care Unit, was anyone directly
5 supervising you?

6 A. No.

7 Q. Other than when you had your training with Peggy
8 Stevenson to become a med tech, did you ever have any
9 interaction with her again after that?

10 A. No.

11 Q. Did Peggy ever oversee what you were doing in terms
12 of passing out the meds after your initial training?

13 A. No.

14 Q. Okay. How much interaction did you have with the
15 nurse, Peggy Stevenson, when Mrs. Boice was a resident?

16 A. Not much.

17 **(Video stopped.)**

18 MS. CLEMENT: Now we're going to hear from the head
19 nurse again, Budgie Amparo. He's responsible -- as he told
20 you, he's the pillar of quality services and the buck stops
21 with him. What supervision did he do? He's responsible
22 overall for everything in the company as it relates to the
23 care of the residents. And what does he look at? And I
24 asked him, *What are you looking at? What data points?*
25 *What quality metrics are you looking at?* And this is what
26 he said.

27 **(The following video excerpt was then played in open**
28 **court) :**

1 Q. As the chief clinician for Emeritus, it's your
2 responsibility to ensure the quality of care is being
3 delivered to the residents; is that correct?

4 A. Yes.

5 Q. And the way that you measure the quality of care is
6 to track the residents developing skin breakdown,
7 unexplained weight loss, unusual number of falls, or falls
8 with injury, residents developing incontinence, regulatory
9 compliance, employee safety, and the CPR results; is that
10 correct?

11 A. Yes.

12 **(Video stopped.)**

13 MS. CLEMENT: I just want to -- he said a word there
14 you won't know, "CPR results." Comprehensive Process
15 Review. That was Emeritus' internal audit system, where
16 they were to annually be going to each facility with
17 trained, specialized staff to come in and evaluate each
18 aspect of the business, from pharmacy delivery to quality
19 of care by the residents, to marketing, to human resources.
20 That's what that word means. And I just wanted to make
21 sure you understood that before we proceeded. Thank you.

22 **(The following video excerpt was then played in open**
23 **court):**

24 Q. Does your department create a report that tracks the
25 metrics that you use to measure quality of care across the
26 company?

27 A. No.

28 Q. Do you look at any documentation on a monthly basis

1 that -- to measure the quality of care in these metrics,
2 skin breakdown, weight loss, fall occurrence, and
3 incontinence?

4 A. No.

5 **(Video stopped.)**

6 MS. CLEMENT: Well, the truth is, Mr. Amparo --

7 MR. REID: Objection, your Honor. That's
8 argumentative as phrased.

9 THE COURT: Rephrase.

10 MS. CLEMENT: The evidence will show that Mr. Amparo
11 does have a metric system, that he requires his divisional
12 nurses -- like Lisa Hulse, the California division nurse --
13 to provide to him on a monthly basis. It's a written
14 report. But it doesn't address the quality issues that he
15 was just talking about. What it addresses is the risk of
16 media exposure; the risk of residents requesting their own
17 records; the risk of the state regulators coming into the
18 facility; and the risk of residents moving out.

19 As you will see, and the evidence will be clear in
20 this case, occupancy and filling the beds is the number one
21 priority of this company.

22 Now I want to talk to you about my clients, the
23 Boices.

24 This is Joan and Myron Boice at their 50th wedding
25 anniversary, which was a family function at home with their
26 children and grandchildren. This picture was taken four
27 years -- just under four years before Mrs. Boice became a
28 resident at the facility.

1 In late 2005, Joan Boice started showing signs of
2 dementia. Her children, Nancee, Mark and Eric Boice had
3 discussions with the family about what we should be
4 doing -- and with Joan and Myron. And they tried a lot of
5 different things. They offered for mom and dad to come and
6 live with them. They offered to bring in private
7 caregivers. And they tried that for a while and it didn't
8 really work out well. Sometimes elders don't like other
9 people coming into their home.

10 And you'll learn that Mark Boice lives in Ohio with
11 his family. Nancee Boice is a teacher and is single and
12 lives in a small apartment in Santa Cruz and teaches
13 underprivileged children in Salinas. And Eric and Kathleen
14 Boice and their two children lived -- were in the process
15 of moving to Weimar, which is up north of Auburn.

16 These offers were made to Joan and to Myron. But
17 Myron was still very independent and he did not want what
18 he felt was burdening the children. It was no burden to
19 the children, but he wanted to remain independent, but he
20 wanted to live closer to some of the children and be closer
21 to the grandchildren.

22 So they made a family decision. They did some
23 investigation. They spoke with the family doctor, and
24 assist living was recommended. And they found a wonderful
25 facility in Roseville called The Palms. And in March of
26 2007, Joan and Myron moved to The Palms. And at that time,
27 Joan was doing quite well. She was walking with her
28 walker, and she had a lot of things that she loved to do.

1 They lived in The Palms for a year-and-a-half until
2 September of 2008.

3 These pictures are showing things that Joan liked to
4 do. The center picture is Joan after she'd been at
5 Emeritus for about a month-and-a-half or six weeks. But
6 Joan loved being with her family. That was probably her
7 favorite thing. She enjoyed her children and
8 grandchildren. She liked doing crafts at The Palms. She
9 liked coloring and painting. She liked walking. At that
10 time she was using a walker and going around everywhere
11 with that. She liked to eat. And she really enjoyed time
12 with Myron her husband, and they would spend time together
13 every day.

14 When she first moved into the facility, she and
15 Myron were in the same little apartment. And then over a
16 few months time the nursing staff at The Palms, which was
17 also an assist living facility, and also had a Memory Care
18 Unit, thought that Joan would probably do better in the
19 Memory Care Unit. And they were right. Because Myron was
20 doing a little too much for Joan. And when Joan got over
21 to that Memory Care Unit, she really thrived. And Myron
22 still was over visiting her every day. But now Joan was
23 doing more things on her own, and she had more staff
24 interaction and she gained weight. And she loved it there.

25 And the family would visit regularly, two, three
26 days a week. Nancee would come up from Santa Cruz on the
27 weekends. Mark would come out a few times a year from
28 Ohio. And they really, really liked The Palms, the whole

1 family did. And that was their only experience as a family
2 with any kind of a facility at all.

3 Joan in her prior life, before she retired, was a
4 teacher. She grew up in the midwest. She came to
5 California with a girlfriend to get a teaching job. That's
6 where she met Myron. She taught for several years. And
7 once she started having her children, she stopped working
8 for a while. And then she went back to work, where she was
9 a secretary. And eventually she went back to teaching,
10 substitute teaching and volunteering at the school.

11 Myron was a sales representative for a corporation
12 for many years. And even right before they moved to
13 The Palms, Myron was still working. He was delivering cars
14 for Enterprise rental car from place to place. And Joan --
15 Joan had a good life.

16 And in the summer of 2008, Myron, who was still
17 driving and wanted -- was feeling like Weimar was a long
18 way to go to get to the kids and he wanted to have more
19 access. And so he started looking around. And he started
20 looking for a place with -- and I know this is going to
21 sound funny -- a salad bar. Myron was a bit of a health
22 nut. He liked to exercise and he liked to eat a lot of
23 salads, and he wished there was a place with a salad bar.
24 And that's what started his quest for looking for another
25 place. And he did.

26 And in July of 2008, Myron and Eric called --
27 started calling different facilities to see if they could
28 find a place that was just like The Palms but closer.

1 And in August of 2008, Mark and Eric and Myron
2 visited The Palms -- excuse me, visited Emerald Hills.

3 And this is Emerald Hills. This is the exterior of
4 the building. And you can see it's quite large. Three
5 stories. It's quite grand. And it was funny because when
6 Mark and Eric and Myron got there, they were like, *Wow.*
7 *This even looks like The Palms.*

8 And when you walk into the building, it's very
9 inviting. There's a beautiful mural on the wall. And as
10 you continue to walk through the facility, there's a dining
11 room on the activities living side that has a piano and a
12 balcony above. And there is a fireplace. And there's a
13 fish tank. And there's an aviary with live birds in it.
14 And it looked really nice.

15 And they were greeted there and had arranged for a
16 tour with a young lady who was a sales and marketing
17 person, known as the customer relations -- or community
18 relations director. But that's the name of the sales and
19 marketing director at the facility. And her name was
20 Melissa Gratiot. And Melissa gave them a tour. And as she
21 toured, she showed them Emerald City, which is what they
22 called their memory care neighborhood. And the family told
23 her about The Palms and how great The Palms had been but,
24 you know, they wanted to be -- this was going to cut the
25 drive distance down in half.

26 And when you went inside, you saw these rooms. This
27 is what it looks like inside the Memory Care Unit. Each of
28 these individual doors is to a resident's room. And some

1 rooms are private and some rooms are shared.

2 And -- is that it for the pics?

3 And they were told by Melissa that, *We're just like*
4 *The Palms*. We have assisted living for Myron. We have the
5 memory care for Joan. We have highly-trained staff. We
6 have a full-time nurse. We are -- this is the perfect
7 place for her. And so that was August 15th.

8 After that, Melissa followed up with phone calls and
9 e-mails to Eric, who was helping his parents. And she said
10 at one point, *We have a phenomenal deal. All the way up to*
11 *the region has given me permission to make this phenomenal*
12 *deal for you. And I know you're looking at different*
13 *facilities -- and the family were -- but we think we're the*
14 *best one for you and these are the reasons why.*

15 And so on August 29th, Eric met with Nancy Cordova,
16 the executive director, and signed the contract.

17 On August 30th, Kathleen Boice, Eric's wife, brought
18 down the money.

19 And on September 12th, Eric and his son and some
20 friends moved their furniture into the facility, Joan into
21 the memory care side where she shared a room with another
22 little lady with dementia, and Myron on the assist living
23 side. And they waited four hours before the nurse, Peggy,
24 came. And at that time Joan was assessed for the first
25 time. That was the first time anyone at Emeritus had ever
26 even met Joan.

27 THE COURT: All right, Counsel. I think this is a
28 good time for our morning break now.

1 MS. CLEMENT: Okay.

2 THE COURT: Ladies and gentlemen --

3 I'm going to ask for everybody to wait for the
4 jurors to leave, please.

5 Leave your notebooks on the chairs. Please remember
6 all the admonitions I read you this morning.

7 Let's be back ready to go at ten to. Okay?

8 We are in recess.

9 (Recess.)

10 (Change of reporters.)

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